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New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

Herring Advisory Panel Meeting Summaries

- August 25, 2010
- November 9, 2009



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FINAL REPORT

Herring Advisory Panel

Sheraton Harborside Hotel, Portsmouth NH

August 25, 2010

The Herring Advisory Panel on August 25, 2010 in Portsmouth, New Hampshire to: develop recommendations concerning the catch monitoring alternatives and alternatives to address river herring bycatch for inclusion in Amendment 5 to the Herring Fishery Management Plan (FMP).

Meeting Attendance:

Herring Advisory Panel: Dave Ellenton (Chair), Bob Westcott, Peter Baker, Jennie Bichrest, Jeff Reichle, Jeff Kaelin, Don Swanson, Vito Calomo, Peter Mullen, Chris Weiner, Spencer Fuller (11 Advisory Panel members present, 4 absent: Al West, Gib Brogan, Dave Turner, Peter Moore); *Others:* Carrie Nordeen (NMFS), John Johnson (proxy for Peter Moore), Sean Mahoney (proxy for Gib Brogan), Madeline Hall-Arbor (PDT member), Jamie Cournane (PDT member), Gary Libby, Gary Hatch, Glenn Robbins and several other interested parties.

Mr. Ellenton started the meeting with opening remarks, and Ms. Steele gave an overview of the development of the Amendment 5 management alternatives and the timeline for completing work on Amendment 5. Mr. Ellenton and Ms. Steele discussed the possibility of having another joint Committee and Advisory Panel (AP) meeting in the future for reviewing the Draft EIS and selecting preferred alternatives, prior to public hearings.

Council Staff Discussion Paper: Potential Applicability of Flow Scales, Truck Scales, and Volumetric Measurement in the Atlantic Herring Fishery

Ms. Bigelow presented a Council staff white paper that explores the potential for using flow scales, hopper scales, and truck scales in the herring fishery to generate more accurate estimates of catch weight and to move away from reporting catch through volume-based estimation. She summarized the presentation by noting that some of the issues to be addressed/resolved if scales are going to be required in any aspect of the fishery include: accounting for water weight; weighing speed; scale installation, calibration, certification, and maintenance requirements; and selection/approval of scale vendors. A few questions were asked by AP following the presentation:

- Mr. Ellenton asked if the AP would be in favor of using an alternative unit of measure to the hogshead, and Ms. Bichrest supported the idea. Ms. Bigelow noted that there may be cost savings to using the hogshead unit, as the boats in Maine were already required to be

measured by hogshead. Ms. Bichrest clarified that there are approximately 1,200 pounds in a hogshead.

- Mr. Ellenton inquired if there were any options that Ms. Bigelow did not think were feasible based on the disadvantages she had found in her research. Ms. Bigelow noted that axle pads and wheel pad scales for trucks were only certified for enforcement purposes, and have issues with accuracy.
- Mr. Ellenton noted that he would like the AP's comments to be added to the Draft Amendment 5 document.
- Ms. Bigelow clarified that a Certified Weighmaster would need to be present when using truck scales for the weight estimation to be used in a financial transaction. A few of the scales she had presented in the existing truck scales section may have a Certified Weighmaster present already, but she was not certain. She also explained that if the option were to be chosen then she would need to do further research into those scales, to determine if they were functioning 24 hours a day or if they would allow the industry to use the scales for the purposes of the amendment.

Measures to Confirm the Accuracy of Self-Reporting (Section 2.5)

Ms. Bigelow explained the measures to confirm the accuracy of self reporting and the corresponding comments as they were in the Draft Amendment 5 Document. Some of the issues included: water weight in all scale measurements, certification and documentation issues, and where clarification and specification was needed in each option. As each measure was explained, there were several responses:

- Mr. Westcott described the process that he recently undertook to certify his two holds for the menhaden fishery, including the conversion to cubic meters (0.36 coefficient) by a marine surveyor. In his description, he also noted that his certification had later come in the mail, signed by the state of Rhode Island, and that subsequently he had gotten his license. He also explained that when the boat came into port, the fish would be at a certain level that was marked during the certification, and that perhaps dropping a weight into the hold would work. He also thought a RI Department of Environmental Management employee would be coming to check the landings, although he noted that he had not had any landings since the certification, as the fishery had be closed. Ms. Bichrest noted that she thought the process was similar to the pilot project in Maine, and that if anyone felt the boat landings needed to be checked, they could be, as a result of the certification. Ms. Bigelow noted that some of the states that she had spoken with may not be willing to certify other people's work.
- Mr. Ellenton asked Ms. Nordeen to comment on the opinion of NMFS regarding the certification of holds and the options associated with it. Ms. Nordeen told the AP that the option for certification of holds had not been discussed, but that criteria for the option would need to be developed, similar to the state of Maine regulations. She also noted that NMFS had already certified some scales, but the Committee would need to develop specific criteria for them if they were chosen.
- Mr. Calomo pointed out that sounding of holds was a well known process in many places, and he did not feel that the procedure needed to be reinvented for the purposes of the amendment.

- Mr. Weiner explained a similar procedure that he had been a part of in the chemical industry, where the chemicals were moved by weight. He also explained that there were many public truck scales available, and that although the trucks lose a little weight occasionally, such as loss of fuel weight, the process should be a feasible one for the herring industry and may cut costs.
- Mr. Johnson pointed out that in his work, the fish holds and the trucks are already measured, and the measurements are adjusted based on dealer feedback. He noted that there was a substantial interest in knowing how much fish was in either container. He also noted that there were people on all the vessels involved that were supposed to be monitoring how much catch was taken. He suggested that similar to his operation, it would be good to come up with a system of measurement and guidelines, and then train the observers already in the industry to take those measurements, on a tow by tow basis, noting that it would be good for both the observers and the vessel and wouldn't require additional equipment.
- Ms. Bigelow noted that the communities of Stonington, Vinalhaven, Lubec, Eastport, and Prospect Harbor do not have scales in and around the ports used by the herring industry.
- Mr. Reichle recommended that the truck weighing section be removed from the document, as it was impractical; the industry is functioning 24 hours a day and the scales would need to do the same. He also pointed out that in some locations, ice is added to the fish, and in others, the trucks come to the facilities to pick up fish without the bait containers on the trucks, and that both situations may alter the weights in the trucks.
- Mr. Kaelin recalled the discussion from the previous Committee meeting, where one of the objectives that was mentioned is to better align dealer data with VTR data. He interpreted this objective to be focusing on how many fish are being landed at the point of landing, but noted that the industry was likely to want the same information in order to be paid correctly. He also thought the truck weighing options should be removed from the document, as he did not think the Committee objective of aligning VTR data with dealer data would be achieved through those options. Mr. Fuller agreed, noting that the option to weigh trucks at existing scales would require the trucks to drive an additional 15 to 20 miles in some case, which would slow down operations and increase costs. Ms. Bichrest also agreed, noting that the quality of the fish may be compromised, that trucks may not be able to get to their destinations on time, and that they already have a lot of paperwork and regulations associated with the transport of herring. She also reminded the AP that the limits on fishing days were already complicating and rushing boat's landing times.
- Ms. Bichrest inquired into the measurements of trucks in Canada, and Ms. Bigelow replied that further research into their regulation would be needed if the truck options are chosen. Ms. Bichrest advocated for the same marks in fish holds being drawn in the herring transport trucks, and noted that it would help with standardization in the industry. Ms. Bigelow noted that the procedure for certifying fish holds requires filling the hold with water, and that the same procedure would not work for all trucks because some are not water-sealed like fish holds.
- Mr. Mullen expressed support for an option to calibrate truck holds, in addition to fish holds, so that the two could be cross-checked. He also did not support flow scales, pointing out that they would add to the instability of boats, particularly his, where all the locations for a scale are high above the deck of the boat.

- Mr. Kaelin cautioned that the objective of the options is important, and noted that the option to certify fish holds meets that objective but that other options could cause new problems. He noted the variability in the way fish are handled and transported from port to port, and the ability of fish to settle differently depending on the handling, which could be problematic with truck measurements. He expressed concern over enacting regulations that would require boats to wait for a third party to arrive at port before proceeding. He felt he could support an option that would require verification when possible, and that it would be a sufficient cross-check between dealer and VTR data. He also noted that self-reporting had been occurring for a long time and was working well, but that the public's opinion of it would need to be changed.
- Mr. Westcott expressed concern that he knew the volume of his fish holds and how many pounds of water that equated to, but did not get the same number of pounds when the hold was full of herring, and noted that the number of pounds was significantly less. Ms. Bigelow clarified that the issue of conversion would need to be decided on by the Committee and Council, and Mr. Westcott supported the conversion that the Southeast Science Center utilizes.
- Mr. Baker noted that the groundfish sectors have 100% verification of landings, and asked that Mr. Libby speak to the issue. Mr. Libby explained that dockside monitoring needs to be conducted by a third party, and that vessels in his fishery were encouraged to wait 15-20 minutes for the third party to arrive, and if they did not, it was alright to start the offloading process without them. He suggested that a random weighing of the trucks to prove the vessel's volume accuracy may be appropriate. He further explained that when there are 5,000 – 10,000 pounds of groundfish in the boat, the offloading procedure typically takes two to three hours. When the fish are sold to the exchange, they are weighed at the exchange, but when sold to their own organization, they are weighed there.
- Mr. Kaelin noted that the groundfish fishery is very different from the herring fishery, because groundfish can be measured individually, and thought similar measures between the two fisheries would be inappropriate.
- Mr. Johnson also noted the differences between the groundfish fishery and the herring fishery, specifically noting that the herring fishery often changed the ports in which they landed. Dewatering boxes are set up according to the needs of the market and the locations of the fish.
- Ms. Steele questioned the value of sounding the tank if it is not a part of portside sampling. Mr. Reichle replied that the point would be to check and monitor the dealer reporting relative to what is being sold.

During the discussion, measures related to catch monitoring and control plans (CMCPs) were addressed. Ms. Nordeen explained the Agency's concerns regarding the CMCP options and stated that further discussion by the AP would be illuminating. She also noted that the options for CMCPs should be fleshed out further. Ms. Steele also explained the CMCP options, and related it to the larger section on CMCPs in the document. Mr. Reichle felt that a CMCP would be acceptable in the herring fishery from a plant perspective, but that for individual boats it would be very difficult. Mr. Baker described the initial intent of the CMCP options and noted that the industry did not seem to want to utilize CMCPs, and he did not express concern about eliminating those options for that reason.

1. MOTION: VITO CALOMO/BOB WESTCOTT

To recommend, as a preferred option, to have the vessels measured and certified, to better determine the estimated weight of fish on board (Section 2.5.2)

Additional Discussion on the Motion: Mr. Calomo noted that the measurement of the hold would give a good estimate on how many fish were on the boat. Mr. Kaelin clarified that the measure would be used as a check against dealer reporting. He also pointed out that there are going to be differences in the data because of the various ways of handling the fish during and after they are offloaded, and he wondered how to deal with those issues. Mr. Westcott noted his own loss of eight to ten percent of the total weight when offloading, and attributed it to water. Ms. Bichrest suggested that the regulations in Canada may have a way to deal with the inaccuracies, including differences in fish quality, which also makes a difference in the measurements. Ms. Bigelow noted a standard percentage that was applied through measures in Europe to address inaccuracies. Mr. Ellenton pointed out that the objective was to confirm self reporting at the present time, not monitor or count landings, and Mr. Reichle further pointed out that the percentage did not need to be decided on currently, but could be worked through once data had been obtained from the fishery.

Mr. Baker stated that he could not support the motion, as he felt it was confirming the status quo, and was not supportive of merely measuring the boat currently and taking action later. Mr. Wiener noted that the motion was confusing. Mr. Johnson voiced concern that simply measuring the boat holds would not be enough. He asked that there also be a report and measuring device that any third party could come on deck and use to take a measurement. There was then further clarification of the option in the document between Mr. Baker and Mr. Reichle. Mr. Baker questioned where the checks and balances would be in the system. Mr. Reichle explained that initially the fish holds would be certified but that data would also be collected, in a specified way, to develop a standard and cross-check the plant information where fish are weighed, and that pending that data, further action could be taken in the future. The motion and the measure would add a cross-check mechanism through a third-party. A friendly amendment was suggested by Mr. Baker, to include the phrase “to be determined by a third-party;” however Mr. Calomo noted that the language was not necessary, as NMFS was always capable of coming to check the hold, regardless of the wording. Mr. Weiner clarified that according to the motion, a third party could verify the catch at any time. Mr. Mullen noted that observers could be trained to sound the tank and the data could be at NMFS very quickly thereafter. Mr. Baker withdrew his mention of the friendly, based on the clarifications he had received during the discussion.

MAIN MOTION #1 CARRIED UNANIMOUSLY.

2. MOTION: JEFF REICHLE/JENNIE BICHREST

To recommend eliminating the options for weighing trucks from Section 2.5.3 (first three options under Section 2.5.3)

Additional Discussion on the Motion: Mr. Reichle further noted that the truck weighing options are impractical due to the industry’s standard of working over holidays and at odd hours, as well as the ability to get the trucks to the scales in question. Ms. Bichrest supported the motion, noting that the options would be cost prohibitive.

Ms. Bigelow noted that with the option remaining, there is still no specified process for weight verification once the truck is full. She explained that height of the fish in the truck could be different from location to location in the truck if the truck was not completely level and the fish had not settled, therefore the sounding technique used on the boats would not work on the trucks. Mr. Westcott pointed out that the trucks often shake the load to level it, and Mr. Swanson clarified that use of truck scales also required a completely level location. Ms. Bichrest suggested that the leveling could be done by eye once the truck had finished draining. Ms. Bigelow thought that if that technique were employed, there would need to be a series of marks in the truck.

Mr. Ellenton inquired if it would only be federal dealers that the regulations applied to. Mr. Reichle noted that it would have to be any truck that hauled herring, and that furthermore a large portion of dealers did not use their own trucks. Ms. Steele clarified that regulations would have to specify any trucks that are used to haul herring as needing to be certified. Mr. Mullen also thought it should be any truck that hauled herring for money that would need the certification. Ms. Bigelow explained that the Regional Office had expressed concern over certifying trucks in general, and Mr. Kaelin read Ms. Goodale's explanation that part of the problem was that the Regional Office does not certify trucks. Mr. Swanson asked about trucks that are containerized, as in flatbeds that carry herring in totes or bins, and Mr. Reichle thought that the bins would need to be certified, but noted that there were probably between eight and ten thousand being used by the industry. Ms. Bigelow expressed concern that there were also bins that did not get put onto trucks but that were used to store the herring at the ports.

The AP agreed that it would support further consideration of an option to require trucks to be measured and certified.

MAIN MOTION #2 CARRIED 6-3-0.

Mr. Reichle suggested that the sounding of the tanks option be employed for a time, after which a percentage of variation could be established based on the difference between the soundings and what is weighed coming out of the boat, and that could be used to monitor quotas, instead of dealer data. Mr. Johnson explained that the largest problem he saw in the industry was the open trucks and tankers, not the vats which he already felt were accurate. Mr. Reichle suggested that the measures would make it so dealers would be aware that if they were under-reporting and not selling fairly, then the quotas would go down, and the dealer would no longer be able to procure fish.

3. MOTION: JEFF KAELIN/JENNIE BICHREST

To recommend eliminating Section 2.5.4 from the document (requirements for flow scales on herring vessels)

Additional Discussion on the Motion: None.

MAIN MOTION #3 CARRIED 8-0-1.

The AP did not have any comments on the CMCP section.

Funding Options

Ms. Steele described the various options in the Draft Amendment 5 Document to address funding. She highlighted the problems associated with some of the funding options currently in the document.

4. MOTION: JEFF KAELIN/VITO CALOMO

To recommend that the AP only support Section 2.11.2 to fund catch monitoring from federal funds (based on the options currently listed in Section 2.11 of the document)

Additional Discussion on the Motion:

- Mr. Kaelin felt that another amendment addressing ITQs would change the way that funding was considered, and short of that, only federal funding should be considered.
- Mr. Libby supported the motion because he felt no money would come out of the RSA option and the dealer option would mean the fishermen would end up paying.
- Mr. Swanson questioned why the industry could not fund the program, similar to the way the recreational fishery funds programs. He noted that an option from the industry would mean the buyer of the fish would pay for the program. Mr. Reichle did not agree with the suggestion, and cited his own experience in which the cost was always passed on to the fishermen, due to the competition from sellers overseas. Mr. Mahoney agreed with Mr. Swanson's suggestion, and noted that other industries also pay for their own monitoring, and did not think the federal government should have to.
- Mr. Baker pointed out that some people would vote for the motion because they don't think that the right funding options are in the document, while others would vote for the motion because they don't think that other options should be considered. He stated that he would support the motion because he does not think that the right option for funding is in the document at this time.

MAIN MOTION #4 CARRIED 8-0-1.

Ms. Bichrest suggested, as an alternative source of funding, that a tax be applied for the end user, that would be evenly distributed and asked Mr. Reichle what amount would be appropriate for such a tax. Mr. Reichle responded that the matter was complicated, and that a customer in a foreign country was not going to spend extra money to buy from the US if the price was cheaper in a different country. He felt the tax would still end up on the fishermen, and asked that the conversation focus on why observer costs in the Northeast were more expensive than anywhere else in the world.

5. MOTION: PETER BAKER/CHRIS WEINER

To support a monitoring program that will have the capacity to extrapolate catch, bycatch, and incidental catch across the fishery

Additional Discussion on the Motion: Mr. Kaelin did not support the motion if meant extrapolation of river herring catch to the fishery-wide level when 75% of the tows in the industry did not have river herring in them, and noted that the observer program already extrapolates from the tow level. Mr. Ellenton asked if the intent of the maker of the motion was to extrapolate across the whole fishery. Mr. Baker explained that the past 15 years in the industry

had not seen enough observer coverage, and that therefore there was not enough information to extrapolate from. He stated his desire for the best estimate of bycatch in the herring fishery, and noted that it should be a goal of the amendment, and thought the industry advisors should support the measure, as it was important that the Committee and Council know that the AP supports the goal. Ms. Steele suggested changing the word “extrapolate” to “estimate” or something similar. Mr. Johnson noted his experience in the field, and how he has seen how extrapolation can be inaccurate. Mr. Baker clarified that funding was not considered in the motion, and that his intent was to get the AP to clarify that there is an inadequate monitoring program and that they want accurate information and to be able to make or change or remove regulations based on how much bycatch is occurring in the fishery.

MOTION #5 PERFECTED

To support a monitoring program that will have the capacity to generate accurate estimates of catch, bycatch, and incidental catch across the fishery

Additional Discussion on the Motion: None.

MOTION TO AMEND: JEFF KAELIN/VITO CALOMO

To add “...and provide for determination of the biological implications of that catch, bycatch, and incidental catch”

Additional Discussion on the Motion: Mr. Baker inquired how the herring monitoring program would determine the biological implications of the bycatch, noting that it would have to do with the processing of the data, not the monitoring program.

MOTION TO AMEND PERFECTED

To add “...sufficient for the Council to make a determination of the biological implications of that catch, bycatch, and incidental catch”

Additional Discussion on the Motion: Mr. Kaelin noted that there is no river herring assessment, and suggested that there may be significantly less river herring bycatch than was previously recorded. He explained that the point of his amendment was to make sure that the intent of the motion is not to vilify the fishery, and that the public understands what the biological implications of the incidental catch may be. Mr. Baker did not feel the motion vilified the fishery, and was concerned that the motion addressed the processing of the data and not the collection. Mr. Kaelin voiced further concern over the use of the word “extrapolate.” Mr. Mahoney did not feel that the wording addressed Mr. Kaelin’s concerns, and noted that the motion to amend could change the level of monitoring that was needed. He supported the idea that the data be used for a purpose.

MOTION TO AMEND CARRIED UNANIMOUSLY.

MAIN MOTION #5 CARRIED UNANIMOUSLY.

Measures to Require Electronic Monitoring

Ms. Steele described the various options in the Draft Amendment 5 Document to address electronic monitoring. Ms. Steele noted that some options could be implemented through a framework if the alternatives were worded correctly in Amendment 5. She asked that the AP consider which options could be implemented in the current year and which options to move forward with. Several comments followed the presentation:

- Mr. Westcott explained his camera system as it was set up on his boat for the Observer Program's groundfish experimental project. He explained that four cameras would also be on board when he fished for herring in the winter, and that the cameras were provided by the Fisheries Sampling Branch.
- Mr. Weiner suggested that options two and three be left open for research, with the option to implement them through a framework later.
- Mr. Reichle explained his experience in the fishery with a Simrad system that was three years old, and that the system did not work 70% of the time. He did not support the requirements because he felt the equipment had not been developed enough, especially if trip terminations were required for equipment failure.
- Mr. Westcott noted that in the groundfish fishery the requirements for observers also required the industry to pay for the observers beginning in 2012. He was hoping that the cameras could alleviate the costs of the observers. He also described how the video monitoring and sampling worked for groundfish, which included bringing the bag up on deck and the use of a conveyor belt.
- Mr. Reichle reiterated his belief that the gear may not be ready for use, particularly in the herring fishery, but expressed hope that a research project could be done based on the options which could then turn into a framework which could be implemented later.
- Mr. Weiner supported the idea of utilizing the options in a research capacity and then transferring them to requirements in a framework at a later date, if they functioned well in the research, as he did not think the cameras could see the dumping which occurs in the herring fishery very well.

6. MOTION: JEFF REICHLER/BOB WESTCOTT

To recommend eliminating Sections 2.9.2 and 2.9.4 from consideration at this time

Additional Discussion on the Motion: Mr. Kaelin explained that the original intent of both options was determined a few years ago before the industry understood that NMFS was not ready for a herring study fleet. Mr. Mahoney opposed the motion.

MAIN MOTION #6 CARRIED 7-1-1

Measures to Address River Herring Bycatch

Ms. Steele described the various options in the Draft Amendment 5 Document to address river herring bycatch. She explained the updates that would be presented at the upcoming Herring Committee meeting and the change of hotspot focus areas from statistical areas to quarter degree squares. Mr. Kaelin thought the language should reflect the involvement of several gear types. He noted interest from the bottom trawl fleet outside of the herring fishery.

7. MOTION: JEFF KAELIN/JENNIE BICREST

To recommend that measures to address river herring bycatch in Amendment 5 would apply to Category A, B, C, and D herring vessels

Additional Discussion on the Motion: Mr. Kaelin felt that the best approach was to have the entire fleet aware that there may be encounters of river herring hotspots. Mr. Baker expressed concern that the scope of the measures would become extraordinarily large and act to distract from the initial intent of the measures. He felt the measures should apply primarily to Category A and B vessels. Ms. Steele noted that there may be a lot of latent permits that may not renew as a result of the measure, as many of the permit holders do not land much herring.

MOTION TO AMEND: PETER BAKER/CHRIS WEINER

To remove “and D”

Additional Discussion on the Motion: Mr. Weiner noted that it was difficult enough to fund the measures for Category A and B vessels, and he did not see how Category D vessel requirements could be funded as an addition. Mr. Mullen did not support the motion to amend, and thought the measures should apply to all boats across the fishery. Mr. Mahoney asked for clarification on implementation of the original motion. Ms. Steele explained that implementation would be complicated, but could be done, and may eliminate many latent open access permits. Mr. Kaelin noted that his motion responded to data which shows that almost half the river herring mortality comes from the bottom trawl vessels.

MOTION TO AMEND FAILED 2-5-1.

Ms. Steele clarified that the first alternative is a no action alternative, and would therefore not recommend that catch monitoring would apply to Category D permit holders.

MAIN MOTION #7 PERFECTED:

To recommend that measures to address river herring bycatch in Amendment 5 (Alternatives 2-7) would apply to Category A, B, C, and D herring vessels

MAIN MOTION #7 CARRIED 6-1-1.

Ms. Steele asked if there was any discussion to be had on move-along rule thresholds and durations, and noted that these issues would need to be addressed if the option is chosen. Mr. Kaelin expressed hope that random thresholds and durations would not need to be set, and that the ongoing SFC project would be able to determine some numbers for use.

Other Business

Mr. Calomo noted the need for the best information available for the Draft EIS document. He also noted that the river herring stock complex has been decreasing for 30 years, but that the herring fishery has really just emerged in the last 10 years. He also noted that the public should be made aware of the issue. Ms. Steele noted that it was up to the Committee to decide if they wished to use a precautionary approach in the face of uncertainty.

Ms. Steele gave a brief description of the issues associated with the measures to establish criteria for midwater trawl vessel access to groundfish closed areas. She explained that the issue could be addressed through multiple mechanisms, but the Committee and Council will need to make the decision.

Mr. Calomo noted the economic benefit to the nation of the pelagic fishery, and asked that it be emphasized in the document. He also noted the shore-side facilities that have benefitted from the industry and the jobs associated with the economic benefit and the loss of employment incurred when the sardine canneries closed. He suggested that more fishing could lead to an even larger economic benefit. Mr. Baker echoed the sentiment that all economic impacts of all the measures in the document be considered, as well as the impacts on recreational fisheries including river herring fisheries that have been shut down.

Mr. Ellenton inquired about the process and possibility of having a discussion with the Groundfish Committee about the Framework 43 haddock catch cap, noting that increased observer coverage warrants consideration of adjusting the cap since the cap is calculated based on an expectation of 20% coverage. Ms. Steele clarified that changes to how the cap is calculated would require an additional Council action, as there is no room for flexibility in the catch cap calculations established in Framework 43. Mr. Baker expressed interest in setting a cap that was more applicable to expected observer coverage.

Mr. Kaelin pointed out that the groundfish closed areas are being reconsidered and may not exist in the future. He then explained that his company was the owner of multispecies permits being fished in a sector, but when they tried to sell them, they got no bids for the haddock ACE that the permits allow. He inquired if there is a way to work with the groundfish fishery to see how haddock ACE could be applied towards the catch cap allowance in the future.

The Herring Advisory Panel Meeting adjourned at approximately 5:00 p.m.



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FINAL MEETING SUMMARY

NEFMC Herring Advisory Panel

Sheraton Harborside Hotel, Portsmouth NH

November 9, 2009

The Herring Advisory Panel on November 9, 2009 in Portsmouth, New Hampshire to: review the draft 2010-2012 Atlantic herring fishery specifications, options for total allowable catches/annual catch limits, and all available related analysis; develop AP recommendations regarding 2010-2012 specifications for the Herring Committee/Section to consider on November 10; review Herring Committee work on catch monitoring alternatives to be included in Amendment 5 to the Herring Fishery Management Plan (FMP); discuss issues related to reporting, herring Letters of Authorization (LOAs), and proposed measures to address LOAs, carrier vessels, and transfers at sea; develop AP recommendations as appropriate.

Meeting Attendance:

Herring Advisory Panel: Peter Baker, Jennie Bichrest, Peter Moore, Dave Ellenton (Chair), Jeff Kaelin, Don Swanson, Vito Calomo, Al West, Peter Mullen, Chris Weiner, Spencer Fuller;

Others: Frank Blount, Herring Committee Chairman, and several other interested parties.

Mr. Blount chaired this Advisory Panel meeting so that Mr. Ellenton could participate more freely in the discussion and crafting of motions/voting.

Review and Discussion of the Draft 2010-2012 Specifications Document

Ms. Steele presented an overview of the options and analysis of impacts with regards to the 2010-2012 Atlantic herring fishery specifications. This included an overview of the total allowable catch (TAC) or sub-annual catch limits (ACLs) including projections for overfishing level (OFL) and acceptable biological catch (ABC). The presentation also included an outline of the risk assessment with both the methods used and an explanation of the results. She also presented a detailed overview of the economic impacts which highlighted the potential implications of the planned reductions and increases in costs for the fisheries. She also noted the difficulties that the lobster industries may face as a result of the reduction. She summarized the issues that the Herring Committee/Section needed to address at this meeting and summarized the timeline and noted that the Committee would make its recommendations to the Council at the November 17-19, 2009 Council meeting in Newport RI. Several questions were asked by Committee and audience members following the presentation:

- Mr. Ellenton expressed his dissatisfaction that the SSC would be meeting after the Advisory Panel, and that the Advisory Panel would not know what the SSC decides until after they have made their own recommendations. Ms. Steele responded by suggesting that everyone call in listen to the SSC discussion. She also explained that while the options in the specifications package could be scaled up based on any SSC decision, the inshore area would not be scaled up as well. She further explained that the Council will need to decide what the SSC's decisions mean for next years specifications. Her suggestion was that extra fish may go to Area 3, but that predict is difficult. Mr. Ellenton then stressed how uncomfortable he was with the information available to work with; with a buffer spread between 40% and 17%, he noted that decisions will be difficult. Ms. Steele replied that even if the SSC changes the ABC it doesn't change risk assessment.
- Mr. Kaelin described the he found the risk assessment troubling. He added that the fishing mortality (F) at maximum sustainable yield (MSY) was not reasonable, and that Option's 4-6 reductions are based on a rate of fishing that doesn't seem reasonable. He asked if a peer review of the risk assessment was possible. He stated that Options 4-6, in his opinion, should be rejected, as they show a complete lack of reality of the fishery.
- Ms. Steele replied the PDT does is not usually subject its analysis to a peer review, because the analytical tools do not need to be peer reviewed. She added that it is the Committee and Council's decision to ask for a peer review. The risk assessment could be brought to the SSC, but the analysis is sound. The problem lies, she explained, in the inputs (the assessment), which everyone has accepted as best available science. She further explained the she did not believe there was a better way to do the risk assessment. Mr. Kaelin responded by pointing out that not everyone has accepted the assessment, and added that the only good advice it produced was that the fishery is not overfishing the stock. He then emphasized the need for a new assessment.
- Mr. Gehan noted that the package itself is predicated on Amendment 4 and seeks to accept terms that don't exist in plan. Given that the Amendment underpins the entire specs package, he reminded the audience that the ACL requirement is to have an ACL in place by 2010 and that until the Council completes work on Amendment 4 there is no mechanism to set ACLs. He continued, noting that the Panel could advise the Council to use the OFL of 145,000mt for next three years, and put in place a buffer based on Council recommendations, have fairly substantial buffer put in place and then press for a new assessment. He then inquired how reference points are created for the sub-stocks of herring.
- Mr. Kaelin inquired if the Council asked the PDT to analyze the benefits of the complete spawning closures. He stated the need to understand the biological implications of closure such as the impacts on recruitment. Ms. Steele replied that the information was already in the analysis, in that if there is a closure it is considered in the analysis.
- Mr. Calomo was touched by the economic and social impacts that may prevail, and stated that he does not see such drastic steps need to be taken when the stock is not overfished and overfishing isn't occurring. He added that it is very simple to send fishermen offshore, but with the movement of the groundfishing fleet to offshore there were many fatalities and sinkings, which could happen with the herring fishery as well. He then said that problems with the scientific data need to be considered before endangering fishermen's lives.

- Mr. Moore inquired if the average catches from the last 5 or 10 years from the fishery were considered. He then pointed out that the long term averages show a different story. He then noted that Options 4A down would wipe out the fishermen. He asked if the Committee and PDT were comfortable destroying the lobster fishery based on scientific uncertainty, and asked about the long term average's place in the analysis. Ms. Steele replied that Option 1 is based on 10 yr average catch and said that the Committee asked for a historical Option based on where fish have been caught in the last 10 yrs, and so that is reflected in Option 1. She then explained that the what the fishery has caught in last 5, 10, and 15 years has been discussed, but is not in the Options the PDT has been directed to produce.
- Mr. Kaelin explained that one of his the biggest concerns is the impact to the mackerel fishery, and he feels that the impact in Area 2 will be very important, as they catch herring incidentally.

Development of Recommendations on ABC/OY Alternatives and TAC/Sub-ACL Options

Mr. Calomo asked for an informal presentation on the economic impacts from Mr. Kitts. Mr. Kitts therefore walked through the economic analysis that he had performed, and clarified the major points in the analysis, such as his figure of 130 thousand dollar loss being a potential loss, not an actual loss at the recent level. He also specified that it is very hard to predict how prices will respond, so he assumed that recent year's prices behavior will continue in the future. There were a few responses to the presentation:

- Mr. Calomo then expressed his concern about the economic and social impacts to the lobster industry, and further worried that foreign countries may begin to ask for a TALFF. He mentioned that people around the world are crying out for this protein and that the outcry going to be far beyond what is being predicted
- Mr. Kitts explained that the task he as charged with was to describe what the Options will mean economically, to a reasonable extent. He then explained that he thought the fisheries ability to cope would be based on what the fishery could extract out of Area 3.
- He added that he had not had the time to do an input-output analysis about how the losses might filter through the economy.
- Mr. Ellenton described a trip to a New Bedford plant last week and the devastation it is facing.
- Mr. Moore pointed out that the goal is to catch OY, shouldn't be discounted that the number is not a real for the industry. He further noted that 13.6 million is an ex-vessel number, and that there is no multiplier associated with it. Mr. Moore explained that Dan Georgianna at SMAST did some analysis for New Bedford and used an economic multiplier of 3 or 4 times that to get to the number for the whole area. He added that these Options were not just going to effect New Bedford and south coast, but whole coast.
- Mr. Baker asked Mr. Kitts if he had looked into the social and economic costs of the collapse of the inshore Gulf of Maine stock complex and what that would mean to the coastal communities. Mr. Kitts replied that he had not, and could not by the time of the Council meeting the next week.

Mr. Calomo inquired if Madeleine Hall Arber would be permitted to give an informal presentation as well. Ms. Hall Arber therefore presented a short overview of her social analysis, which she emphasized was based on the economic analysis. She mentioned that she was unable to do a full analysis because she did not expect to have this in a document until Amendment 5, but that touched on some of the major issues as the changes were proposed.

1. MOTION: JEFF KAELIN/DAVE ELLENTON

Reject Options 4A, 4B, 5, and 6

Additional Discussion on the Motion: None.

MOTION TO SUBSTITUTE: PETER BAKER/CHRIS WEINER

That the Herring AP Support the Herring PDT's Risk Assessment and would like to see it peer reviewed by the SSC

Additional Discussion on the Motion:

- Mr. Kaelin pointed out that he had not seen anything from the SSC that suggests a problem with exploitation rates on the stock components
- Mr. Baker moved that this motion be rejected, because the decisions ought to be based on the best available science and that is what the SSC has given.
- Mr. Kaelin expressed that he did not feel that the SSC was the appropriate peer review group, as it is not their expertise, and when asked who would be, Mr. Kaelin suggested a Council of Independent Experts

FRIENDLY AMENDMENT/MOTION TO SUBSTITUTE

That the Herring AP support the Herring PDT's Risk Assessment until an independent peer-review can be conducted

Additional Discussion on the Motion: None.

MOTION TO SUBSTITUTE FAILED 3-8

MAIN MOTION #1 CARRIED 8-2-1

Mr. Kaelin inquired into the specificity needed for the recommendations being made, to which Mr. Blount replied that the hope was for fairly specific recommendations. The hope was that the recommendations could be scaled up or down based on the SSC's decision. Mr. Kaelin expressed optimism that the SSC would decide to go with the status quo until a new assessment could be produced, as it would be a fairly risk adverse option, with something like five year catch

averages being used. He went on to describe an option in which the 145,000 mt OFL would be used with a 29,000mt buffer for scientific uncertainty, and asked other peoples opinion of what to do for 2010. Mr. Ellenton agreed and suggested that the current specifications be rolled over into 2010, as he did not see anything that would justify reducing current level of catches.

Mr. Blount pointed out that with the previous motion, Options 4 and on have been eliminated, but that 1-3 are on the table. He then emphasized that the Options presented are considered to be as far of measures as need to be taken. He suggested that the Panel assume no change will come from the SSC and try and figure out an alternative that would work. Ms. Steele then asked to get some sort of statement regarding the risk assessment from the panel, in terms of what elements are done incorrectly or inappropriately. She asked that people not just disregard the risk assessment and ask for a peer review; if rejection is the answer but the industry is significantly over F at MSY, how should the Council go about reducing the risk to the inshore component. She also asked that if any Options were created that they be clearly defined and explain how the Committee can reduce the risk of overfishing in the inshore component.

Mr. Kaelin pointed out that there was no advice given from the SSC or the TRAC that suggested that the stock complex is at risk of overfishing. He went on to criticize the whole risk assessment, as he felt it is based on an exploitation rate in the summer that is too high. Ms. Steele told the AP that typically when there is a stock complex with individual components most of reference points fall within a similar range. Ms. Steele then read a statement from the 2003 SSC report that reflected concerns about the distribution of the catch between management areas and the importance of minimizing the risk of overfishing any individual stock component.

Mr. Kaelin pointed out that the SSC has never commented on the differences between the offshore and inshore complexes, but that they have made general statements about being precautionary with fishing different stock components. Mr. Ellenton then responded that the fishing in Area 1A is already as conservative as it can be.

2. MOTION: JEFF KAELIN/JENNIE BICHREST

That for fishing year 2010, the current specifications be rolled over and that for fishing years 2011 and 2012, US OY be equal to the average catches from the period 2001-2008

Additional Discussion on the Motion: Several points of discussion were raised in regards to Motion # 2:

- Mr. Kaelin pointed out that with Amendment 4 not in place, there ought to be enough flexibility in the law to roll over the specifications from 2009, as it is unlikely that entire OY will be caught. He also explained that there was no indication that the current level of fishing effort is risking a stock collapse.
- Mr. Weiner described similar issues with tuna, and noted that he has learned to follow what the science recommends and therefore he stated that it was difficult to support the motion. Mr. Kaelin countered by explaining that the scenario would only be in place until the new benchmark in 2012, and reiterated that the current assessment is flawed and needs to be rejected.

- Ms. Bichrest mentioned that the tuna fishermen she had talked to had seen more herring; and went on to express support for the motion, stating that the status quo will not overfish the stock and will keep people employed.
- Mr. Calomo expressed a desire to minimize small fish catches and asked to see analysis of the benefits of the spawning closures.
- Mr. Baker explained that he believed the Panel should not ignore the best available science and break the law.
- Ms. Steele requested clarification on the breakdown of the proposed motion, to which Mr. Kaelin replied that they had not decided on the breakdown but would leave that decision making until tomorrow. He said he had seen strong support for Option 2A or Option 3, but that it was dependent on how big OY is and how the options affect the yields in the area. To him it was not realistic to expect catches in 1A to be higher than they have been, but he pointed out that Alternative 1 in Option 2A has a higher exploitation rate than is currently utilized.
- Ms. McCarron stated that the MLA supports the motion being considered and supports the science, but further stated that these Options are going to devastate the industry. She emphasized that the science is uncertain, and asked to buy more time to get an assessment in place that has better certainty. She further noted the SSC's statement that current landings among the management areas are still producing an abundant stock, and thought that the proposed motion would give her and her industry enough time to dodge severe impacts.

MOTION #2 CARRIED 8-2-1

Development of Recommendations: DAH, DAP, JVP/IWP, USAP, Reserve, TALFF, BT, Fixed Gear Set Aside, Research Set Aside

3. MOTION: PETER BAKER/CHRIS WEINER

That the AP accept the Herring Committee recommendations for JVP/IWP, BT, TALFF, Reserve, Research Set-Asides, and USAP

Additional Discussion on the Motion: Mr. Calomo asked for clarification that all 4 were being set to 0 and BT to 4000. Mr. Calomo then stated a desire to have the 3% RSA left in. Mr. Ellenton asked about the logic behind the RSA decision and why no research was being supported. Mr. Kaelin responded that the RSA is only used in 1A, and in order to reserve as much of the quota as possible in that Area, no RSA would be set aside. Mr. Ellenton replied that although he was not going to lose sleep over the decision he would not like to lose opportunities for research.

MOTION SPLIT: FIRST MOTION

That the AP accept the Herring Committee recommendations for JVP/IWP, BT, TALFF, Reserve, and USAP

FIRST MOTION CARRIED UNANIMOUSLY

MOTION SPLIT: SECOND MOTION

That the AP accept the Herring Committee recommendations for research set-asides unless the TACs remain at or close to current levels

SECOND MOTION CARRIED UNANIMOUSLY

4. MOTION: JEFF KAELIN/VITO CALOMO

That the fixed gear set-aside be reduced proportionately based on the distribution of TACs in Area 1A through the three-year period

Additional Discussion on the Motion: Mr. West inquired if the fixed gear set aside had been used in 2009. Ms. Steele clarified that there was information about the fixed gear fishery in the specifications package, which indicated that approximately 250mt were used, but that the full 500mt has not been utilized, and that the quota goes back to fishery if not utilized by November 1 of each year.

MOTION #4 CARRIED 7-1-2

Mr. Kaelin inquired if it would be appropriate for the PDT to take a look at what that motion number would be, and consider Options 2A and 3 and figure out how they would break down. He then clarified that some of the Panel could do it themselves overnight. Mr. Blount replied that Ms. Steele was not able to do such analysis, but Ms. Steele herself suggested the averages on Page 48 of the specifications package as a starting point.

The Herring Advisory Panel Meeting adjourned at approximately 3:00 p.m.

